

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
 v.)) Criminal No. 0
)
 THOMAS D. TUKA)

11-134

INDICTMENT MEMORANDUM

AND NOW comes the United States of America, by its attorneys, David J. Hickton, United States Attorney for the Western District of Pennsylvania, and Leo M. Dillon, Assistant United States Attorney for said District, and submits this Indictment Memorandum to the Court:

I. THE INDICTMENT

A Federal Grand Jury returned a 6-count Indictment against the above-named defendant for alleged violations of federal law:

<u>COUNT</u>	<u>OFFENSE/DATE</u>	<u>TITLE/SECTION</u>
1-4	Income Tax Evasion April 15, 2004 (Count 1) April 15, 2005 (Count 2) April 15, 2006 (Count 3) April 15, 2007 (Count 4)	26 U.S.C. § 7201
5-6	Failure to File Income Tax Return April 15, 2008 (Count 5) April 15, 2009 (Count 6)	26 U.S.C. § 7203

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II. ELEMENTS OF THE OFFENSES

A. As to Counts 1-4:

In order for the crime of Income Tax Evasion, in violation of 26 U.S.C. § 7201, to be established, the government must prove all of the following essential elements beyond a reasonable doubt:

1. That Thomas D. Tuka had a substantial income tax deficiency;
2. That Thomas D. Tuka made an affirmative attempt to evade or defeat the payment of the income tax; and
3. That Thomas D. Tuka acted willfully.

Third Circuit Model Criminal Jury Instruction 6.26.7201.

B. As to Counts 5-6:

In order for the crime of Failure to File Income Tax Return, in violation of 26 U.S.C. § 7203, to be established, the government must prove all of the following essential elements beyond a reasonable doubt

1. That Thomas D. Tuka was required to file an income tax return;
2. That Thomas D. Tuka did not file a tax return at or before the time required by law or regulation;
3. That Thomas D. Tuka's failure to file was willful.

Third Circuit Model Criminal Jury Instruction 6.26.7203.

III. PENALTIES

A. As to Counts 1-4: Income Tax Evasion (26 U.S.C.

§ 7201):

1. Imprisonment of not more than five (5) years (26 U.S.C. § 7201);
2. A fine of \$250,000 (18 U.S.C. § 3571(b)(3));
3. A term of supervised release of three (3) years (18 U.S.C. § 3583(b)(2));
4. Any or all of the above.

B. As to Counts 5-6: Failure to File Income Tax Return (26 U.S.C. § 7203):

1. Imprisonment of not more than one (1) year (26 U.S.C. § 7203).
2. A fine of not more than \$100,000.00 (18 U.S.C. § 3571).
3. Supervised release of not more than one (1) year (18 U.S.C. § 3583(b)(3)).
4. Any or all of the above.

IV. MANDATORY SPECIAL ASSESSMENT

A mandatory special assessment of \$100.00 must be imposed as to Counts 1-4, upon which the defendant is convicted, pursuant to 18 U.S.C. § 3013. A mandatory special assessment of \$25.00 must be imposed as to Counts 5-6, upon which the defendant is convicted, pursuant to 18 U.S.C. § 3013.

V. RESTITUTION

Restitution is not authorized as to Counts 1-6 by 18 U.S.C. §§ 3663, 3663A or 3664.

VI. FORFEITURE

Not applicable in this case.

Respectfully submitted,

DAVID J. HICKTON
United States Attorney



LEO M. DILLON

Assistant U.S. Attorney
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